

## INDEX.

	Page
STATEMENT OF THE CASE-----	1
ARGUMENT -----	5
I. The ownership of a share of stock in a California agricultural corporation constitutes an interest in agricultural lands, prohibited to ineligible aliens by the California Alien Land Act-----	5
A. Text book and judicial expressions support- ing our argument that the owner of a share of stock in a landowning corporation has an interest in the lands of such corporation	20
II. The United States-Japan Treaty does not protect the ineligible alien appellant in his acquiring the shares of stock in this case on account of said shares having certain attributes of personal property----	25
III. The fourteenth amendment to the United States Con- stitution does not protect either the ineligible alien appellant or the citizen appellant in their dealing with the shares of stock in this case on account of said shares of stock having certain attributes of personal property -----	33
APPENDIX. Exhibit A. California Alien Land Act of 1920 -----	36

### CASES CITED.

	Page
Blythe vs. Hinckley, 180 U. S. 333.....	34
Chirac vs. Chirac, 2 Wheat. 259.....	34
Clarke vs. Clarke, 178 U. S. 186.....	34
De Vaughan vs. Hutchinson, 165 U. S. 566.....	34
Hauenstein vs. Lynham, 100 U. S. 483.....	34
Huber vs. Martin, 105 N. W. 1031.....	21
Porterfield vs. Webb, 279 Fed. 114.....	18
Terrace vs. Thompson, 274 Fed. 841.....	18, 26
San Diego Gas Co. vs. Frame, 137 Cal. 447.....	24

### TEXT BOOKS CITED.

	Page
Clark & Marshall's "Private Corporations," pp. 23 ff.....	23
Corpus Juris, Vol. 12, pp. 760 ff.....	16
Corpus Juris, Vol. 14, pp. 63 ff.....	20
Fletcher, "Cyclopedia Corporations," Vol. 5, pp. 5595 ff....	22
Morawetz on "Private Corporations," p. 1.....	24
Pomeroy, "Equity Jurisprudence," Vol. 3, p. 982.....	21

IN THE  
SUPREME COURT  
OF THE  
UNITED STATES

October Term, 1922.

No. 555.

RAYMOND L. FRICK and N. SATOW,  
*Appellants,*

*vs.*

U. S. WEBB, as Attorney General of the  
State of California, and MATTHEW  
BRADY, as District Attorney of the  
City and County of San Francisco,  
State of California,

*Appellees.*

APPEAL FROM THE SOUTHERN DIVISION OF THE UNITED STATES  
DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA,  
SECOND DIVISION.

**BRIEF FOR APPELLEES.**

NOTE.—Attached as an appendix hereto, and marked "Exhibit A" is a copy of the California Alien Land Act of 1920.

**STATEMENT OF THE CASE.**

Raymond L. Frick, a citizen of the United States and of the State of California, and N. Satow, a subject of the Emperor of Japan, born in the Empire

of Japan, of Japanese parents, and also a resident of California, are the plaintiffs and appellants in this proceeding. U. S. Webb, as attorney general of the state, and Matthew Brady, as district attorney of the city and county of San Francisco, are the defendants and appellees. The bill of complaint is brought against defendants in their official capacity to enjoin them from bringing any proceeding at law or in equity to escheat certain shares of stock owned by the citizen plaintiff, under the terms of the California Alien Land Act of 1920. (Statutes 1921, page lxxxiii.) It is alleged that the defendants so threatened to prosecute escheat proceedings under section 8 of the act. The citizen intends to sell, for the sum of \$4,250, to the alien plaintiff, twenty-nine shares of the capital stock of the Merced Farm Company, a corporation organized under the laws of California, which corporation is the owner of and by its articles of incorporation authorized to acquire, possess, enjoy and convey agricultural land, which agricultural land consists of twenty-two hundred acres in Merced County, California. A majority of the issued capital stock of the corporation is owned by citizens of the United States. So far as the petition shows, the said twenty-two hundred acres of agricultural land is the only property belonging to the said Merced Farm Company. There is no allegation of the said Merced Farm Company engaging in any business of any character whatsoever, except this allegation that it so owns this agricultural land

in this state, and that it is so authorized to acquire, possess, enjoy and convey such agricultural land in this state.

Section 3 of the Alien Land Act provides that if a majority of the capital stock of this corporation belonged to ineligible aliens, the corporation could acquire agricultural lands only as permitted by the treaty between this country and the nation or country of which such stockholders are citizens or subjects.

With reference to the corporation before the court in this case, where there is no such majority ownership in aliens, the same section 3 provides that any ineligible alien may acquire shares of stock in such a corporation only as permitted by any treaty between this country and the nation or country of which such alien is a citizen or subject.

Section 7 of the act provides that any property acquired by the corporation in which the majority of stock is owned by ineligible aliens, and where such a treaty does not protect such ownership, may be escheated to the state.

Section 8 provides that any shares of stock so owned by ineligible aliens, where such ownership is not protected by such a treaty, may be escheated to the state.

It is the theory of defendants that the treaty between the United States and Japan does not protect the particular ownership of these twenty-two shares of stock in the hands of the plaintiff ineligible alien, and that, therefore, they may be escheated to the state

under the procedure outlined in section 8 of the act.

The injunction sought in the bill of complaint is asked for on the theory that the citizen plaintiff is entitled to relief under the protection of the Fourteenth Amendment to the United States Constitution, and that the alien plaintiff is entitled to such relief by reason of the said Fourteenth Amendment, and also by reason of the treaty existing between this country and Japan.

## **ARGUMENT.**

### **I.**

**THE OWNERSHIP OF A SHARE OF STOCK IN A CALIFORNIA AGRICULTURAL CORPORATION CONSTITUTES AN INTEREST IN AGRICULTURAL LANDS, PROHIBITED TO INELIGIBLE ALIENS BY THE CALIFORNIA ALIEN LAND ACT.**

As we view this case, the vital and all-important question to be answered is,

Does the ownership of a share of stock in a California corporation, whose assets are agricultural lands of said state, constitute an interest in real property in said state?

If so, there can be no question that the Alien Land Act of California prohibits such ownership in an alien ineligible to citizenship in this country.

That such an interest in the agricultural lands of the State may be prohibited without violating the United States Constitution or the United States-Japan Treaty has been decided by the United States District Court of California, and by the United States District Court in the State of Washington, in the two cases which are to be argued before this Court at the same time that this case is argued. That is, our California case of *Porterfield vs. Webb*, 279 Fed. 114, and the State of Washington case of *Terrace vs. Thompson*, 274 Fed. 841, said cases being respectfully, October Term, 1922, No. 299, and October Term, 1922, No. 302.

We are assuming that the motion of appellants to advance this cause for argument to November 27, 1922, will probably be granted. We plan to have our brief in this case filed with the court one week before the said date, in order to conform to the rules, though under the circumstances we will not have the usual advantage of examining the brief of appellants prior to the preparation of this brief.

Also, the transcript has not yet been printed, which renders it impossible for us to refer by folio numbers to the transcript.

We reserve for the *Porterfield* and *Terrace* cases a discussion of the sound reasoning advanced by the district courts which led to their conclusion that the alien land acts of California and Washington do not violate either the United States Constitution or the treaty.

In this case we need give but small consideration to any constitutional or treaty question. We need consider practically nothing except whether the interest owned by the ineligible alien is such an interest in agricultural lands as to amount to a violation of the California act. The United States District Court held that the act was violated and we believe that decision to be so manifestly sound as not to require extensive argument to sustain it.

It will not be out of place to recall briefly at the outset some of the objects which the people sought to accomplish by the enactment of the California Alien Land Act.



It was not the acquirement of title in fee alone that this legislation was designed to prevent.

It was the purpose of those who understood the situation to prohibit the enjoyment or possession of, or dominion over, the agricultural lands of the state by aliens ineligible to citizenship. It was the purpose of the people in a practical way to prevent ruinous competition by the oriental farmer against the American farmer. Those who drafted this legislation fully realized that such competition, working through the means of corporate entities, would have the exact practical effect as in the case of the identical individuals competing without having been organized in such corporate entities. It was understood that the American farm home would be subjected to the same ruinous attack and by the same class of oriental labor whether the individual aliens were organized in corporate bodies or not.

The economic clash which it is the sovereign right of the state to prevent is none the less disastrous by reason of the existence of such corporations as the California statute was designed to prohibit.

The destruction of our farm life is not the more desirable because accomplished by orientals holding stock in agricultural corporations, rather than by the same people individually holding the title in fee. California is interested in preventing the destruction of the farm life. California is not particularly interested in one method of destruction, as opposed to another.

Capital stock in corporations in California is, of course, personal property, as that expression is commonly used with reference to the usual ownership of such shares of stock. However, they represent an interest of the owner of the stock in the corporation itself. Assuming that the corporation owns real property, the stockholder has an interest therein to the extent of his shares of stock. The legal title, of course, is in the corporate entity. The corporation, however, owns the same only as an agency for the real owners, who are the stockholders. As such owners of stock representing an interest in real property, these ineligible aliens are subject to the control by this state of their interest in the agricultural lands of this state.

The United States-Japan Treaty might possibly be held to guarantee the right of this ineligible alien to own or inherit corporate shares of stock in an ordinary commercial corporation engaged in trade or commerce, where we would not be concerned with the question of any interest in the agricultural lands of California. But that is not the case here.

Now let us assume a California corporation which owns nothing but agricultural lands in the State of California. Let us assume further that 100 per cent of the capital stock of said corporation belongs to aliens who are ineligible to citizenship in the United States. We submit it is obvious that to permit of such a situation, and prohibit some one person who is so ineligible to citizenship owning the identical

land, would be ridiculous. The purpose of the act is to prevent dominion over and control of such lands in this state by aliens ineligible to citizenship. The courts have held that there is inherent in the states of the Union the power to so control their lands. That question has been settled and, we respectfully submit, is no longer open for serious debate.

If that be so, of what value would such judicial determination be to the states, if the identical prohibited purpose might be accomplished through the mechanical device of setting up a legal entity known as a corporation and permitting ownership of its stock by the same class of ineligible aliens, and then saying that merely by reason of this incorporeal entity being so created, these ineligible aliens might be permitted to so possess and enjoy the agricultural lands of the state?

A share of stock in a corporation is personal property for ordinary purposes. But here we have a rule which has grown up through the years ever since the Year Books of the common law, to permit the citizens and residents native of any country to control their lands. The foundation for the rule that has been established for so many years is the prime necessity of self-preservation. Unless the native citizens of any state are permitted to control the ownership and interest in lands of that state, the state is not secure against foreign attack.

In this case we see an attempt to defeat this most important purpose, the reason for which is so well understood in the law, by setting up the technical

and peculiar attributes of shares of stock in corporations. The rules laid down by our courts with reference to the character of shares of stock, as to their being personalty rather than realty, have been enunciated without any reference to the subject which we are here considering. A share of stock in a corporation may be personalty, for instance, for the purposes of taxation. But what has this to do with our question, which deals with an entirely different subject matter and is addressed to corporate shares of stock from an entirely different viewpoint? The law does not permit of absurdities, and it would be an absurdity to conclude that a share of stock in the corporation before the court is so far personal property that the state is without the right to control as to the ownership thereof by ineligible aliens when it is stock in a corporation owning and dealing in the agricultural lands of the state.

We call attention to the Washington Alien Land Act, which was before the court in the *Terrace* case. It is to be found in chapter 50 of the Laws of Washington, 1920-21, at page 156. Section 2 of said act provides that no alien shall own land or take or hold title thereto, and that no person shall take or hold title to land for an alien. Further, that land now held by or for aliens in violation of the constitution of the state is forfeited and declared to be the property of the state, and that land hereafter conveyed to or for the use of aliens, in violation of the constitution, or of the said Washington Alien Land Law, shall

thereby be forfeited to and become the property of the state.

It is, then, necessary to determine what is meant in said law by the word "alien," and also by the word "land." We find these definitions in section 1 of the act. Section 1, subdivision *a*, provides:

" 'Alien' does not include an alien who has in good faith declared his intention to become a citizen of the United States, but does include all other aliens and *all corporations* and other organized groups of persons *a majority of whose capital stock is owned or controlled by aliens*, or a majority of whose members are aliens; "

A corporation in Washington, the majority of whose stock is owned or controlled by aliens, is to be considered, for the purposes of that act, as an alien.

Subdivision *c* of said section 1 defines land as follows:

" 'Land' also includes *any share or interest in a corporation* or other organized group of persons deemed an alien in this act which has title to land either heretofore or hereafter acquired; "

We therefore see that if the plaintiff in our case, Satow, were in Washington and owned a share in a land-owning corporation the majority of whose stock was owned by aliens, that share of stock, by specific statutory provision, would be land. But land is land, not by reason of statutory expression, but rather by reason of its inherent characteristics. The interest in land, in Washington, would be an interest in real property, without the legislative declaration.

It is our contention that so far as the California Act is concerned, the identical result is reached, only in another way. The purpose of the two acts is the same. It is the intention of the legislation in each case, that ownership by ineligible aliens of agricultural lands of the state be made impossible. California accomplishes this purpose by specifically saying that ineligible aliens can not hold shares of stock in a corporation that owns agricultural lands. In giving expression to this rule, the California Act, in effect, says that such a share of stock in such a corporation is an interest in land. It would be no more such an interest in land, if the act, as in the Washington statute, described it as "land."

Washington accomplishes the identical purpose, only by different technical means. Instead of prohibiting the ownership of such a share of stock, the Washington act defines such a share as being land, and then prohibits the ownership of "land." Of course, there is the additional difference, of no importance to us in this case, that Washington appears to limit the prohibition to cases where a majority of the stock is owned by aliens.

We can see no real difference between the method pursued in Washington and the method pursued in California. Mere phraseology can not defeat the fundamental and clear purposes of the two acts.

Let us assume that this California corporation in our case were dissolved.

It is provided in section 400 of the Civil Code of California that the directors of a corporation, at the time of its dissolution, are trustees for the creditors and stockholders, with full powers to sell the assets thereof, in such manner as the court may direct, and distribute the proceeds of such sales "*and all other assets*" to the stockholders.

The said section 400 reads in part as follows:

"Unless other persons are appointed by the court, the directors or managers of the affairs of a corporation at the time of its dissolution are trustees of the creditors and stockholders or members of the corporation dissolved, and have full power to settle the affairs of the corporation, collect and pay outstanding debts, sell the assets thereof in such manner as the court shall direct, and distribute the proceeds of such sales and all other assets to the stockholders. \* \* \*"

If the best interests of the stockholders require it, property may be distributed without its being sold. Agricultural land, for instance, could be divided among the different stockholders. This would be an instance showing, in a practical way, how the corporation is merely holding the legal title for the benefit of the real owners of the land.

The California Alien Land Act treats of the ownership of stock in such corporations as before the court, as an interest in real property. Section 3 provides that a corporation in which a majority of the shares of stock is owned by ineligible aliens, can own real property only as may be permitted by treaty.



Further, to prevent the building up of a corporation so that a minority alien ownership of stock may change to a majority alien ownership, the same section provides that no one share of stock may be acquired by such an alien in such a corporation, except as may be permitted by treaty.

In section 8 the escheat for leasehold and lesser interests in real property is provided for. Again in the same section the escheat of any such shares of stock as are here in question is provided for. The identical escheat procedure is provided in each of these two cases. The attorney general or district attorney of the proper county institutes escheat proceedings, as provided in section 7. In such proceedings the court determines the value of such leasehold or other interest, or of such share or shares of stock, and enters judgment for the state for the amount thereof, together with costs. Thereupon the court orders a sale of such leasehold or other interest or shares of stock, in the manner provided by section 1271 of the Code of Civil Procedure.

Said section 1271 provides in part that:

“in any judgment rendered, or that has heretofore been rendered by any court, escheating property to the State, on motion of the attorney general, the court must make an order that such property, unless it consists of money, be sold by the sheriff of the county where it is situate, at public sale, for gold coin, after giving notice of the time and place of sale, as may be prescribed by the court in such order; \* \* \*”

Out of the proceeds arising from such sale of such leasehold or other interest, or shares of stock, the amount of the judgment so rendered for the state shall be paid into the state treasury, and the balance shall be deposited with and distributed by the court, in accordance with the interests of the parties therein. Here we see that the statute considers this character of stock just as much an interest in land as is a leasehold interest.

Again, in section 6 of the act, which deals with the inheritance by an alien of real property and of shares of stock, the section fixes the same procedure in a probate court in both cases. There is a probate sale and a distribution of the proceeds of the sale to the heir or distributee, in lieu of this property. The land, or any interest therein, and shares of stock of the character that we are considering, are treated as identical for this probate procedure.

Counsel for appellants urged before the District Court that section 3 of the act practically denies to ineligible aliens the right to hold any stock in any California corporation, because almost all of such corporations are

“authorized to acquire, possess, enjoy or convey agricultural land.”

We are concerned, however, only with the facts as here presented, and in paragraphs III and IV of the bill of complaint it is shown that so far as this particular corporation, Merced Farm Company, is



concerned, it does own agricultural lands, and no other properties of said corporation are described.

Plaintiffs here are in no position to argue from the point of view of a holder of stock in a corporation authorized to own real property, but not in fact so owning any such realty.

“It is a firmly established principle of law that the constitutionality of a statute may not be attacked by one whose rights are not affected by the operation of the statute.”

Vol. 12 Corpus Juris, page 760, and the following pages to page 764, with many cases cited.

Included in this text is the following at pages 762 and 763:

“In other words, one attacking the constitutionality of a statute must show that it affects him injuriously and actually deprives him of a constitutional right. It is not sufficient that the statute is unconstitutional as to other persons or classes of persons; it must affirmatively appear that the person attacking the statute comes within the class of persons affected by it.”

It is not necessary for us to consider a point which, in some other case, might be of importance in this connection. We refer to the argument which may be made in support of a construction of the act that would prohibit the ownership of stock by an ineligible alien in corporations having the power to acquire agricultural lands, even though, at the time the stock is acquired, no such stock is so owned by the corpora-

tion. That point is not before this court, and appellants are in no position to urge it. It might, however, be urged in case the question does arise in some other case, that the state would be justified in taking steps to prevent the possible owning of an interest by an ineligible alien in agricultural lands of this state, by prohibiting the acquisition of such stock under such circumstances, which stock might, in the future, be evidence of an interest in such agricultural lands.

However, as above noted, this is mere academic discussion. Counsel also argued in the District Court that unless the articles of incorporation limit the right, such a company would enjoy the privilege of owning agricultural land without any express authorization. The rule is that the corporation could not hold agricultural land unless

First—It is expressly authorized in its articles of incorporation or by statute so to do; or

Second—If not so expressly authorized then there must not be any limitation, by the describing of some particular commercial purpose, for instance, which purpose would not necessarily by implication carry with it the right to own realty.

The purpose of section 3 of the California act seems clear. In the first place, and applying the section to this case, it is provided that any corporation in which a majority of the issued capital stock is owned by aliens subject to the Emperor of Japan and therefore ineligible to citizenship, may acquire,

possess, enjoy and convey real property or any interest therein in this state in the manner and to the extent and for the purposes prescribed by the treaty existing between Japan and the United States, and not otherwise. The effect of this provision is identical with the effect of the provision in section 2 of the act that the same aliens might acquire, possess, enjoy and transfer real property or any interest therein in this state in the manner and to the extent and for the purposes prescribed by this same treaty and not otherwise. That is, the alien mentioned in section 2 and the corporation just described and mentioned in section 3, can not acquire any interest at all in any such real property. The reason for this is that the existing treaty between the United States and Japan does not permit of any such enjoyment or possession of agricultural lands in this state by aliens subject to the Emperor of Japan.

*Porterfield vs. Webb*, 279 Fed. 114;

*Terrace vs. Thompson*, 274 Fed. 841.

The only purpose of the affirmative provision that these aliens might hold these interests in the lands of this state, so far as the treaty permits, is to recognize any rights granted by the treaty. But there are no such rights granted. The only right granted is "to lease land for residential and commercial purposes." (U. S. -Japan Treaty of Feb. 21, 1911: Art. I.)

Now, continuing to the final paragraph in section 3, of the Alien Land Act, this paragraph, for the

purposes of this case, refers to ownership of stock by the identical aliens, rather than to the ownership by the corporation itself of lands in this state. Obviously the act having dealt with a corporation where a majority of the stock is owned by ineligible aliens, now takes up other corporations where no such majority ownership by aliens exists. Its clear purpose is to prevent and discourage such a corporation from changing its character to one where the majority of the stock is owned by ineligible aliens. This is done by again providing, as in the first paragraph and as we found in section 2 of the act, with reference to the ownership of real property, that any such ineligible alien may acquire stock in a corporation that is authorized to acquire, possess, enjoy or convey agricultural land in the manner, to the extent and for the purposes prescribed by the treaty existing between the United States and Japan, and not otherwise.

Our theory is that no such right is given by the said treaty. If correct in that theory, plaintiffs can not rely upon the treaty. If incorrect, then the act itself recognizes the right of such an ineligible alien as plaintiff here to own shares of stock in such a corporation.

If the theory of counsel for appellants should prevail, one of the primary purposes of the treaty between Japan and the United States would be defeated. We refer to the purpose expressly shown by the history of the diplomatic negotiations to pro-

hibit the nationals of either country claiming any right to acquire interest in agricultural lands in the other country. This diplomatic history has been pointed out by us in our brief filed with this court in the case of *Porterfield vs. Webb, supra*.

A. TEXTBOOK AND JUDICIAL EXPRESSIONS SUPPORTING OUR ARGUMENT THAT THE OWNER OF A SHARE OF STOCK IN A LANDOWNING CORPORATION HAS AN INTEREST IN THE LANDS OF SUCH CORPORATION.

While the legal title to the land rests in the corporation, the equitable interest and beneficial use are in the shareholders.

The principle in the statement just made is announced in *Corpus Juris*, Vol. 14, page 63, Secs. 27 and 28 as follows:

“(Sec. 27) (7). ‘INTEREST’ IN CORPORATE PROPERTY OR BUSINESS. While the title and ownership of property and business of a private business corporation is vested in the corporation as a distinct legal entity and artificial person, the stockholders or members are nevertheless ‘interested’ therein, within the meaning of statutes and rules of law, since the beneficial interest is in them.”

“(Sec. 28) (8). ACTION OF STOCKHOLDERS OR MEMBERS INDIVIDUALLY SUSTAINED AS ACTION OF CORPORATION. Even when there is no question of fraud or illegality, it is held in some cases, in view of the fact that the property of a corporation really belongs beneficially to the stockholders or members,

that the fiction of corporate entity may be disregarded, where no rights of creditors or other third persons are affected, and effect may be given in equity to the action of all the stockholders and members of a corporation although as individuals and without formal corporate action, in distributing among themselves or otherwise disposing of the property of the corporation, or authorizing its officers to do so, just as if there had been formal corporate action in the premises. The rule has also been applied in other cases."

Recognition of this principle is shown by Mr. Justice Marshall in *Huber vs. Martin*, 105 N. W. 1031, at page 1037:

"Where is the ownership of the net assets of a mutual insurance company located? That the legal title is in the corporation goes without saying. The rule in that regard must be the same in case of one corporation as another. Why is not the equitable right—the real beneficiary interest—independently of the corporate use, vested in the members of the corporation in one case the same as in the other? It would seem that after the corporate purposes are exhausted, the property of every business corporation belongs to its members, is self-evident."

The principle is clearly set out by Mr. Pomeroy in his "Equity Jurisprudence," Vol. 3, at page 982, as follows:

"According to this theory, every ownership—property itself—consisted of a legal title and of a use. These two might be combined and held by

the same person, and their union would thus constitute the highest or ideal dominion; or they might be, and often were, separated, and held by different persons; but of the two, the use was the more important, since it represented the real, substantial, usufructuary proprietorship, while the other might be the naked legal estate, drawing after it or conferring no beneficial rights of enjoyment whatsoever. While the legal title and the seisin always existed in some person, and remained subject to the common law dogmas, the use, being a creature of equity, was entirely free from the feudal burdens and from the restrictions growing out of the common law theory as to seisin."

Mr. Fletcher in his "Cyclopedia Corporations," Vol. 5, paragraph 3417, page 5595, recognizes the rule in this language:

"It was said in a New York case that 'the right which a shareholder in a corporation has by reason of his ownership of shares, is a right to participate according to the amount of his stock in the surplus profits of the corporation on a division, and ultimately on its dissolution, in the assets remaining after payment of its debts.' "

And at pages 5596 and 5597, same paragraph:

"The equitable interest of the shareholder in the property of the corporation 'is represented by the term 'stock,' and the extent of his interest is described by the term 'shares.' The expression 'shares of stock,' when qualified by words indicating number and ownership, expresses the extent of the owner's interest in the corporation property."



This interest of the shareholders in the property of a corporation is set forth in Clark & Marshall's "Private Corporations," at pages 23 and 24:

"(f) STOCKHOLDERS ARE 'INTERESTED' IN PROPERTY OF CORPORATION. Though the title to the property of a corporation is in the corporation, and not in the stockholders, the stockholders are undoubtedly *interested* therein. Though the title is in the corporation, the beneficial interest is in the stockholders in proportion to their shares. It has been held, therefore, that the stockholders of a corporation have an insurable interest in its property.

"For the same reason, a stockholder is *interested* in an action by or against the corporation, although not technically a party thereto, and would be within a statute disqualifying, as judge or juror, a person interested in an action. And under a statute imposing a tax upon 'persons interested in the use' of a distillery, it has been held that the stockholders of a corporation operating a distillery are liable.

"(g) MORTGAGE BY STOCKHOLDERS ENFORCEABLE IN EQUITY. Since a corporation is in reality a collection of persons, who have the beneficial interest in its property, a court of equity may give effect to their acts in relation to the property, although they may have been done by them as individuals, and not as the agents of the corporation, nor in its name. As we have seen in another section, a mortgage executed by all the stockholders of a corporation in their own names merely, and as individuals, and covering



the property of the corporation, is not a good *legal* mortgage, for in law they do not own the property of the corporation. It is, otherwise, however, in equity. A court of equity, in such a case, will look beyond the corporation, regarded as a legal entity distinct from its stockholders, and will recognize *the fact* that the substantial, beneficial ownership of the property is in them, and that the corporation holds it for them, and will enforce the mortgage not only against the stockholders, but also as against the equitable demands of subsequent purchasers or incumbrancers with notice from the corporation."

The same doctrine is recognized by Morawetz, who in "Morawetz on Private Corporations," at page 1, says:

"The existence of a corporation independent of its shareholders is a fiction; its rights and duties are in reality the rights and duties of persons who compose it, and not of an imaginary being."

This is quoted approvingly by the Supreme Court of California, in *San Diego Gas Company vs. Frame*, 137 Cal. 447. The Court says:

"The stockholders individually can not sue or be sued in respect to their interests in the property held in the name of the corporation; the litigation must be by or against the corporation. And to turn a corporation out of court summarily, as in this case, is to deny the real parties in interest—the stockholders—the right to protect their property according to law."

The doctrine, as thus presented by the above text, is universally observed and applied by the courts. So far as we are aware, the correctness of these rules has never been judicially questioned.

## II.

### **THE UNITED STATES-JAPAN TREATY DOES NOT PROTECT THE INELIGIBLE ALIEN APPELLANT IN HIS ACQUIRING THE SHARES OF STOCK IN THIS CASE ON ACCOUNT OF SAID SHARES HAVING CERTAIN ATTRIBUTES OF PERSONAL PROPERTY.**

The position of appellants in this case, which the District Court refused to follow, must be that the interest of the plaintiff Frick or of plaintiff Satow in the capital stock of the Merced Farm Company is personal property, and of such a character as personal property that there must be a conclusion in law that the rights of the alien plaintiff Satow, or the rights of the citizen plaintiff Frick, are violated, as such rights are guaranteed either by the United States-Japan Treaty or by the Fourteenth Amendment to the United States Constitution.

We are confident that the case will be disposed of on the first point suggested in this brief, and that the court will conclude that in fact the interest in stock of a corporation of this character is such as to be an interest in real property consisting of agricultural lands in California and, therefore, properly subject to such state control, as has been recognized by the decisions of the United States district courts.

We shall, however, now consider this other phase of the question as to the possibility of considering the interest of the appellants herein in stock in this agricultural landholding corporation to have certain characteristics of personal property, and the bearing that the treaty with Japan and the Fourteenth Amendment to the United States Constitution have upon such character of property.

We shall first consider the treaty.

Our position with reference to the treaty is that its history and its context show that it is peculiarly a treaty of commerce, trade and navigation, and intended to cover those subjects only. Further, it is our position that the matter of interest in a corporation, which corporation in turn owns agricultural lands in this state which it may either hold for agricultural uses or sell, does not come within the scope of a treaty that deals with commerce, trade and navigation.

So far as development of such lands by the corporation itself is concerned, certain comments by the court in the *Terrace* case, *supra*, are of interest. In that case the District Court addressed itself to the claim that the complainant Nakatsuka's business of farming was incidental to his business as a wholesale and retail trader in farm products, and used the following language with reference to this argument:

"A clear intention being shown not to supersede, in the particular now in question, the state's authority to regulate the rights of title and possession in lands within its boundaries, that intent

may not be defeated by the claim now made that complainant Nakatsuka's business of farming is incidental to his business as a wholesale and retail trader in farm products, for there is no more reason for considering farming an incident of the latter than for considering the latter an incident of the former. The language of the treaty is: 'and generally to do anything incident to or necessary for trade upon the same terms as native citizens or subjects \* \* \*.' (37 Stat. at L. 1504.)

"In the most liberal construction of this language that may be indulged in, it can not fairly be said that truck farming is incidental to trading, either wholesale or retail, in the products of a farm, any more than conducting a sheep ranch or growing mulberry trees incidental to the dry goods trade.

*Kidd vs. Pearson*, 128 U. S. 1;

*United States vs. E. C. Knight Co.*, 156 U. S. 1;

*Joyce vs. Auten*, 179 U. S. 591, at 594;

*Capital City Dairy Co. vs. Ohio*, 185 U. S. 238, 245."

The petition in this case alleges that

"the Merced Farm Company, a corporation duly organized under the laws of the State of California \* \* \* is the owner of, and by its articles of incorporation authorized to acquire, possess, enjoy and convey agricultural land." (Paragraph III of the petition.)

Also, in paragraph IV of the petition, there is the allegation

"that the said Merced Farm Company is a corporation organized and existing under the laws of

the State of California and is authorized to acquire, possess, enjoy and convey agricultural land in the State of California, and is now the owner of and in the possession of a large amount of agricultural land, to wit: about twenty-two hundred acres in the county of Merced, in said State of California, \* \* \*."

There is no allegation as to the use to which this land is being put, but, in any event, it is submitted that no possible use of the land could be considered as engaging in commerce or trade.

By "commerce" and "trade," is meant the ordinary commercial relationships and the purpose is to guarantee to the nationals of the high contracting parties the right to engage in trade as such in both countries.

We shall now quote from the United States-Japan Treaty and italicize language showing that the treaty is essentially one dealing with commerce and trade.

The treaty is entitled "Treaty of Commerce and Navigation with Japan."

The preamble to the United States-Japan Treaty recites that the President of the United States of America and His Majesty, the Emperor of Japan, being desirous to strengthen the relations of amity and good understanding between two nations

"and believing that the fixation in a manner clear and positive of the rules *which are hereafter to govern the commercial intercourse between their respective countries* will contribute to the realiza-

tion of this most desirable result, have resolved to conclude a treaty of *commerce and navigation for that purpose, \* \* \*.*”

Article I provides that :

“The citizens or subjects of each of the high contracting parties shall have liberty to enter, travel, and reside in the territories of the other, to *carry on trade, wholesale and retail*, to own or lease and occupy houses, manufactories, warehouses and shops, to employ agents of their choice, to lease land for residential and *commercial* purposes, and *generally to do anything incident to or necessary for trade* upon the same terms as native citizens or subjects, submitting themselves to the laws and regulations there established.”

Article II provides that :

“The dwellings, *warehouses, manufactories and shops* of the citizens or subjects of each of the high contracting parties in the territories of the other, and all premises appertaining thereto used for purposes of residence or *commerce*, shall be respected.”

Article IV provides that :

“There shall be between the territories of the two high contracting parties reciprocal freedom of *commerce and navigation*. The citizens or subjects of each of the contracting parties, equally with the citizens or subjects of the most favored nation, shall have liberty freely to come *with their ships and cargoes* to all places, ports and rivers

in the territories of the other which are or may be open to foreign *commerce*, subject always to the laws of the country to which they thus come."

Article VI provides that:

"The citizens or subjects of each of the high contracting parties shall enjoy in the territories of the other exemption from all transit duties and a perfect equality of treatment with native citizens or subjects *in all that relates to warehousing, bounties, facilities and drawbacks.*"

Article VII provides that:

*"Limited-liability and other companies and associations, commercial, industrial and financial,"*

in either of said countries are authorized in the territories of the other to exercise their rights.

Article XI provides that:

"No duties of *tonnage, harbor, pilotage, light-house, quarantine*, or other similar or corresponding duties of whatever denomination,"

levied in the name or for the profit of government, etc., shall be imposed in the ports of the territories of either country upon the vessels of the other unequally.

Article XIII provides that:

"The *coasting trade* of the high contracting parties is excepted from the provisions of the present treaty," etc.



Article XIV provides that:

“Except as otherwise expressly provided in this treaty, the high contracting parties agree that, in *all that concerns commerce and navigation*,”

there shall be a “most favored nation” agreement.

Article XV provides that:

“The citizens or subjects of each of the high contracting parties shall enjoy in the territories of the other the same protection as native citizens or subjects *in regard to patents, trade-marks and designs*, upon fulfillment of the formalities prescribed by law.”

Shares of stock in such a mercantile corporation, for instance, as a department store, or a store dealing in Japanese articles, might be considered such personal property as to come within the treaty guaranty of ownership thereof. This is a far cry from owning shares of stock in a corporation which, so far as the bill of complaint herein shows, does not, in any single particular, engage in a mercantile, commercial or trade pursuit. If, indeed, the shares of stock in this particular corporation are, as a matter of law, to be considered personal property, then we submit that for the purposes of this case and having in view the objects sought to be attained not only by the Alien Land Act but by the treaty itself, this stock is so impressed with an interest in agricultural lands of this state as to take it without the guarantees of the treaty.

Counsel for appellants in the District Court quoted from Blackstone's Commentaries concerning the



right of an alien to hold chattels real and all kinds of personal property.

No complaint can be found with these quotations from the common law. Blackstone but expressed the rule obtaining at the time he wrote, and that rule, limited in its application to the life and the activities of his day, did no violence. But Blackstone was not speaking of the shares of stock in a corporation. We are not to be chained to the fetish of a dead past, unless there be such an identity of the conditions then and now as to warrant the application of the rule adopted to meet the situation then to the conditions now existing. Some one has expressed a truth that should be inscribed on the cover of every law book, in the following language:

“Our law is not a memorial to the dead, but a rule for the living.”

Justice Crane of the New York Court of Appeals said:

“The two sources of the law are to be found, first in the books, and second, in the life about us.”

Those who negotiated the treaty between the United States and Japan had very definitely in mind just what guarantees were to be given to the nationals of the respective countries, and they also had just as definitely in mind what limitations were to be placed upon these nationals. It was intended that citizens or subjects of the respective countries might engage in trade, commerce and navigation in either

country. It was also intended and particularly provided by amendments to the treaty during the course of the diplomatic negotiations, that no national of either country could claim any interest in the agricultural lands of the other country. If the theory of appellants is sustained, this fundamental purpose of the treaty-makers will be defeated.

We give a full discussion of the diplomatic history of the treaty in our brief here filed in the *Porterfield* case, *supra*.

We therefore urge that counsel can not successfully rely upon the treaty to support their thesis.

### III.

**THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION DOES NOT PROTECT EITHER THE INELIGIBLE ALIEN APPELLANT OR THE CITIZEN APPELLANT IN THEIR DEALING WITH THE SHARES OF STOCK IN THIS CASE ON ACCOUNT OF SAID SHARES OF STOCK HAVING CERTAIN ATTRIBUTES OF PERSONAL PROPERTY.**

Now as to the Fourteenth Amendment to the United States Constitution. Appellant Frick, the citizen, and also the alien appellant, Satow, are entitled to claim the protection of that portion of the Fourteenth Amendment which prohibits the states from depriving any person of life, liberty, or property, without due process of law, or denying to any person within their jurisdiction the equal protection of the laws.

The citizen appellant, but not the alien appellant, may also claim the protection of that part of the

Fourteenth Amendment which provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

The decisive answer to any argument by citizens or by aliens that they are entitled to the protection of the Fourteenth Amendment in such a case as we are here considering is, that the federal courts of this country have determined, in many cases, that that amendment can not be used as an instrument to deprive the states of the Union of their inherent and historical power to control in the matter of ownership or other interest in lands, when a question arises as to prohibiting such an interest being vested in an alien. This point has been decided in the *Porterfield* and *Terrace* cases and in the many cases cited in those decisions.

*Chirac vs. Chirac*, 2 Wheat. 259, 272;

*Hauenstein vs. Lynham*, 100 U. S. 483, 484;

*DeVaughan vs. Hutchinson*, 165 U. S. 566, at 570;

*Clarke vs. Clarke*, 178 U. S. 186;

*Blythe vs. Hinckley*, 180 U. S. 333.

We again submit on this point that if these shares of stock are to be treated as having some of the characteristics of personal property, in the nature of things the courts must recognize that flowing from the ownership of such "personal property" is the inevitable right to share in the profits and proceeds of the agricultural lands of the State of California.

It is because of that right which accompanies the ownership of this stock that we are justified in basing our defense on long established precedent, which refuses to recognize the Fourteenth Amendment as being intended to guarantee any such right to an alien.

Respectfully submitted.

U. S. WEBB,  
Attorney General of the  
State of California,  
FRANK ENGLISH,  
Deputy Attorney General,  
MATTHEW BRADY,  
District Attorney of the City and  
County of San Francisco,  
State of California,  
*Attorneys for Defendants and Appellees.*

## **APPENDIX.**

### **Exhibit A.**

#### **CALIFORNIA ALIEN LAND LAW OF 1920.**

(Statutes of California, 1921, page lxxxiii.)

**An act relating to the rights, powers and disabilities of aliens and of certain companies, associations and corporations with respect to property in this state, providing for escheats in certain cases, prescribing the procedure therein, requiring reports of certain property holdings to facilitate the enforcement of this act, prescribing penalties for violation of the provisions hereof, and repealing all acts or parts of acts inconsistent or in conflict herewith.**

The people of the State of California do enact as follows:

Section 1. All aliens eligible to citizenship under the laws of the United States may acquire, possess, enjoy, transmit and inherit real property, or any interest therein, in this state, in the same manner and to the same extent as citizens of the United States, except as otherwise provided by the laws of this state.

Sec. 2. All aliens other than those mentioned in section one of this act may acquire, possess, enjoy and transfer real property, or any interest therein, in this state, in the manner and to the extent, and for the purpose prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise.

Sec. 3. Any company, association or corporation organized under the laws of this or any other state or nation, of which a majority of the members are aliens other than those specified in section one of this act, or in which a majority of the issued capital stock is owned by such aliens, may acquire, possess, enjoy and convey real property, or any interest therein, in this state, in the manner and to the extent and for the purposes prescribed by any treaty now existing between the government of the United States and the nation or country of which such members or stockholders are citizens or subjects, and not otherwise. Hereafter all aliens other than those specified in section one hereof

may become members of or acquire shares of stock in any company, association or corporation that is or may be authorized to acquire, possess, enjoy or convey agricultural land, in the manner and to the extent and for the purposes prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise.

Sec. 4. Hereafter no alien mentioned in section two hereof and no company, association or corporation mentioned in section three hereof, may be appointed guardian of that portion of the estate of a minor which consists of property which such alien or such company, association or corporation is inhibited from acquiring, possessing, enjoying or transferring by reason of the provisions of this act. The public administrator of the proper county, or any other competent person or corporation, may be appointed guardian of the estate of a minor citizen whose parents are ineligible to appointment under the provisions of this section.

On such notice to the guardian as the court may require, the superior court may remove the guardian of such an estate whenever it appears to the satisfaction of the court:

(a) That the guardian has failed to file the report required by the provisions of section five hereof; or

(b) That the property of the ward has not been or is not being administered with due regard to the primary interest of the ward; or

(c) That facts exist which would make the guardian ineligible to appointment in the first instance; or

(d) That facts establishing any other legal ground for removal exist.

Sec. 5. (a) The term "trustee" as used in this section means any person, company, association or corporation that as guardian, trustee, attorney-in-fact or agent, or in any other capacity has the title, custody or control of property, or some interest therein, belonging to an alien mentioned in section two hereof, or to the minor child of such an alien, if the property is of such a character that such alien is inhibited from acquiring, possessing, enjoying or transferring it.

(b) Annually on or before the thirty-first day of January every such trustee must file in the office of the secretary of state

of California and in the office of the county clerk of each county in which any of the property is situated, a verified written report showing:

(1) The property, real or personal, held by him for or on behalf of such alien or minor;

(2) A statement showing the date when each item of such property came into his possession or control;

(3) An itemized account of all expenditures, investments, rents, issues and profits in respect to the administration and control of such property with particular reference to holdings of corporate stock and leases, cropping contracts and other agreements in respect to land and the handling or sale of products thereof.

(c) Any person, company, association or corporation that violates any provision of this section is guilty of a misdemeanor and shall be punished by a fine not exceeding one thousand dollars or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

(d) The provisions of this section are cumulative and are not intended to change the jurisdiction or the rules of practice of courts of justice.

Sec. 6. Whenever it appears to the court in any probate proceeding that by reason of the provisions of this act any heir or devisee can not take real property in this state or membership or shares of stock in a company, association or corporation which, but for said provisions, said heir or devisee would take as such, the court, instead of ordering a distribution of such property to such heir or devisee, shall order a sale of said property to be made in the manner provided by law for probate sales of property and the proceeds of such sale shall be distributed to such heir or devisee in lieu of such property.

Sec. 7. Any real property hereafter acquired in fee in violation of the provisions of this act by any alien mentioned in section two of this act, or by any company, association or corporation mentioned in section three of this act, shall escheat to, and become and remain the property of the State of California. The attorney general or district attorney of the proper county shall institute proceedings to have the escheat of such real property adjudged and enforced in the manner provided by section four hundred seventy-four of the Political Code and title eight, part three of



the Code of Civil Procedure. Upon the entry of final judgment in such proceedings, the title to such real property shall pass to the State of California. The provisions of this section and of sections two and three of this act shall not apply to any real property hereafter acquired in the enforcement or in satisfaction of any lien now existing upon, or interest in such property, so long as such real property so acquired shall remain the property of the alien, company, association or corporation acquiring the same in such manner. No alien, company, association or corporation mentioned in section two or section three hereof shall hold for a longer period than two years the possession of any agricultural land acquired in the enforcement of or in satisfaction of a mortgage or other lien hereafter made or acquired in good faith to secure a debt.

Sec. 8. Any leasehold or other interest in real property less than the fee, hereafter acquired in violation of the provisions of this act by any alien mentioned in section two of this act, or by any company, association or corporation mentioned in section three of this act, shall escheat to the State of California. The attorney general or district attorney of the proper county shall institute proceedings to have such escheat adjudged and enforced as provided in section seven of this act. In such proceedings the court shall determine and adjudge the value of such leasehold or other interest in such real property, and enter judgment for the state for the amount thereof together with costs. Thereupon the court shall order a sale of the real property covered by such leasehold, or other interest, in the manner provided by section twelve hundred seventy-one of the Code of Civil Procedure. Out of the proceeds arising from such sale, the amount of the judgment rendered for the state shall be paid into the state treasury and the balance shall be deposited with and distributed by the court in accordance with the interest of the parties therein. Any share of stock or the interest of any member in a company, association or corporation hereafter acquired in violation of the provisions of section three of this act shall escheat to the State of California. Such escheat shall be adjudged and enforced in the same manner as provided in this section for the escheat of a leasehold or other interest in real property less than the fee.

Sec. 9. Every transfer of real property, or of an interest therein, though colorable in form, shall be void as to the state and

the interest thereby conveyed or sought to be conveyed shall escheat to the state if the property interest involved is of such a character that an alien mentioned in section two hereof is inhibited from acquiring, possessing, enjoying or transferring it, and if the conveyance is made with intent to prevent, evade or avoid escheat as provided for herein.

A prima facie presumption that the conveyance is made with such intent shall arise upon proof of any of the following groups of facts:

(a) The taking of the property in the name of a person other than the persons mentioned in section two hereof if the consideration is paid or agreed or understood to be paid by an alien mentioned in section two hereof;

(b) The taking of the property in the name of a company association or corporation, if the memberships or shares of stock therein held by aliens mentioned in section two hereof, together with the memberships or shares of stock held by others but paid for or agreed or understood to be paid for by such aliens, would amount to a majority of the membership or the issued capital stock of such company, association or corporation;

(c) The execution of a mortgage in favor of an alien mentioned in section two hereof if said mortgagee is given possession, control or management of the property.

The enumeration in this section of certain presumptions shall not be so construed as to preclude other presumptions or inferences that reasonably may be made as to the existence of intent to prevent, evade or avoid escheat as provided for herein.

Sec. 10. If two or more persons conspire to effect a transfer of real property, or of an interest therein, in violation of the provisions hereof, they are punishable by imprisonment in the county jail or state penitentiary not exceeding two years, or by a fine not exceeding five thousand dollars, or both.

Sec. 11. Nothing in this act shall be construed as a limitation upon the power of the state to enact laws with respect to the acquisition, holding or disposal by aliens of real property in this state.

Sec. 12. All acts and parts of acts inconsistent or in conflict with the provisions hereof are hereby repealed; provided, that—

(a) This act shall not affect pending actions or proceedings, but the same may be prosecuted and defended with the same

effect as if this act had not been adopted;

(b) No cause of action arising under any law of this state shall be affected by reason of the adoption of this act whether an action or proceeding has been instituted thereon at the time of the taking effect of this act or not and actions may be brought upon such causes in the same manner, under the same terms and conditions, and with the same effect as if this act had not been adopted;

(c) This act in so far as it does not add to, take from or alter an existing law, shall be construed as a continuation thereof.

Sec. 13. The legislature may amend this act in furtherance of its purpose and to facilitate its operation.

Sec. 14. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The people hereby declare that they would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.